



FILE COPY

STEVEN A. THOMPSON  
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

MARY FALLIN  
Governor

March 14, 2012



Miles Tolbert, Esq.  
Crowe & Dunlevy  
20 North Broadway, Suite 1800  
Oklahoma City, Oklahoma 73102-8273

Re: DEQ Consent Order, Case No. 11-251  
Carlton Landing Water Utility, LLC

Dear <sup>miles</sup> Mr. Tolbert:

Consent Order, Case No. 11-251, was entered by and between Carlton Landing Water Utility, LLC (Respondent) and the Department of Environmental Quality on November 28, 2011. The Consent Order addressed certain wastewater collection lines and drinking water distribution lines previously installed without a permit at the Carlton Landing residential development located near Eufaula, McIntosh County, Oklahoma.

The Respondent has complied with the requirements of the Consent Order, Case No. 11-251, and the DEQ is therefore closing the case, effective immediately.

Thank you for your assistance and your client's cooperation with respect to the Consent Order. If you have any questions concerning this matter, please do not hesitate to contact me at (405) 702-7184 or by e-mail at [martha.penisten@deq.ok.gov](mailto:martha.penisten@deq.ok.gov).

Sincerely,

Martha Penisten  
General Counsel

c: Michael Taylor, DEQ/WQD  
Case File No. 11-251



RECEIVED

JAN 03 2012

DEQ LEGAL

AFFIDAVIT

STATE OF OKLAHOMA

)

) ss

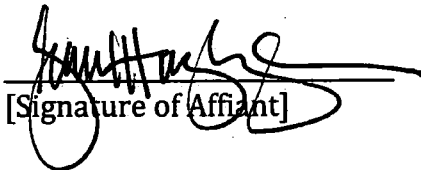
COUNTY OF OKLAHOMA

)

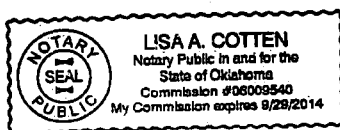
Grant Humphreys, being of lawful age and being duly sworn, deposes and states as follows:

1. I am Manager of Carlton Landing Water Utility LLC.
2. In my capacity as Manager I am familiar with the plans and specifications for the water and wastewater systems of the Carlton Landing development in Pittsburg County, Oklahoma. In addition, as Manager, I was present at regular intervals during the construction of those systems.
3. Carlton Landing Water Utility LLC's water distribution lines and wastewater collection lines are separated from other utilities by a minimum of 12 inches.

Further affiant saith not.

  
[Signature of Affiant]

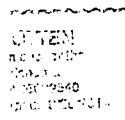
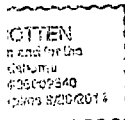
Before me, a Notary Public in and for said County and State, on this 1st day of December, 2011, personally appeared Grant Humphreys, and upon oath stated that the facts set forth in this Affidavit are true and correct to the best of his knowledge, information, and belief.



Lisa A. Cotten  
Notary Public

My commission expires:

9/29/2014





OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER QUALITY DIVISION

OKLAHOMA  
DEPT. OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Carlton Landing Water Utility, LLC

Case No. 11-251

NOV 28 2011

FILED BY:

*OK*  
HEARING CLERK

CONSENT ORDER

The Oklahoma Department of Environmental Quality ("DEQ") and Carlton Landing Water Utility LLC ("Respondent") desire to resolve issues of compliance with DEQ regulations without the necessity for formal administrative or judicial proceedings and hereby agree to this Consent Order.

**FINDINGS OF FACT**

1. Respondent is an Oklahoma limited liability company formed for the purpose of providing utility services, including water and wastewater services, to residents of the Carlton Landing development in Pittsburg County, Oklahoma.
2. The construction of Respondent's wastewater collection lines and drinking water distribution lines was begun without a permit first being issued.
3. Lines for the conveyance of gas at the development were placed in the same trench as sanitary sewer lines and lines for electric, telephone, and untreated irrigation water were placed in the same trench as the drinking water lines. Horizontal spacing of the utilities within the trenches was less than 5 feet. As of the date of this Order none of these lines is in active use.
4. On May 23, 2011, Humphreys Partners 2009 LLC filed applications to construct the wastewater and drinking water lines. These applications were subsequently amended to reflect Carlton Landing Water Utility LLC as the applicant.
5. On June 6, 2011, DEQ personnel inspected the system and directed that work be stopped.

5. On July 6, 2011, Respondent wrote to DEQ to formally request a variance and submitted certain documentation in support. The request sought approval for the sewer and water lines to be located within 1 foot of the other utilities. As of the effective date of this Order, the DEQ has not acted on that request.

### **CONCLUSIONS OF LAW**

6. DEQ has regulatory jurisdiction and authority in this matter pursuant to 27A O.S. §§1-3-1-1 and §§2-6-301 through 2-6-403.

7. The facts as stated in Paragraphs two (2) and three (3) above would, if proven, constitute violations of the following statutory provisions:

**27A O.S. §2-6-304(A)(1)** -- [N]o person shall supply water, or do any construction work of any nature for supplying water, to the public from or by a public water supply system by means of any waterworks without a written permit to construct issued by the Executive Director.

**27A O.S. §2-6-401** -- No person shall construct or let a contract for any construction work of any nature for a municipal treatment works, nonindustrial wastewater treatment system, sanitary sewer system or other sewage treatment works, or for any extension thereof, or make any change in the manner of nonindustrial wastewater treatment or make any change in the treatment, storage, use or disposal of sewage sludge without a permit issued by the Executive Director.

8. Respondent and the DEQ are authorized by 75 O.S. § 309(E) and 27A O.S. § 2-3-506(B) to resolve this matter by agreement.

9. The Executive Director of DEQ may enforce this Consent Order pursuant to 27A O.S. §2-6-308(A), § 2-3-202(A)(10) and §2-6-901.

### **ORDER**

10. Based on the foregoing, Respondent and the DEQ agree, and it is ordered by the Executive Director as follows:

11. Provided that, within 30 days of the entry of this Order, Respondent submits an affidavit of one-foot or greater separation between the water line and other utilities and between the sewer line and other utilities as well as as-built plans showing the locations of both the drinking water distribution lines and the wastewater collection lines, DEQ will not require Respondent to excavate any part of the Carlton Landing water or wastewater systems already installed.

12. The affidavit and as-built plans, once submitted, shall function in lieu of permits for the water and wastewater systems already installed on or before the effective date of this Order at Carlton Landing.

13. Within 30 days of the entry of this Order Respondent shall submit a revised trench detail for future construction at Carlton Landing that shows water and wastewater system separations at least as great as those in Attachment A. Respondent will not receive permits for construction of the water and wastewater lines already installed on or before the effective date of this Order at Carlton Landing. Instead Respondent shall receive the requested permits only for future construction of water and wastewater lines and only to extent the construction is consistent with the revised trench detail, including any revised permit application documents, as well as all other applicable DEQ construction standards for water and wastewater facilities or as approved through the variance process.

14. Future developments by Respondent or its agents, must meet all DEQ water quality requirements, including any construction and/or permitting requirements. Any variance must be approved by the DEQ prior to construction.

15. DEQ shall retain the right to sample, inspect or investigate conditions relating to the Respondent's installation(s) at any reasonable time as provided by law and to take enforcement

action for new violations discovered or occurring after the effective date of any consent order or settlement.

16. The Oklahoma Environmental Code, 27A O.S. §§ 2-1-101 *et seq.*, authorizes the DEQ to seek penalties of up to ten thousand dollars (\$10,000) per day for violations of the Act and the rules promulgated thereunder. Accordingly, based on all the facts and circumstances, a penalty shall be assessed in the amount of Ten Thousand Dollars (\$10,000.00) for the issues of noncompliance discussed in this Order. Payment of this penalty shall be by check or money order made payable to the Oklahoma Department of Environmental Quality Penalty Fund and delivered within sixty (60) days from the effective date of this Order to:

ACCOUNTS RECEIVABLE  
FINANCIAL AND HUMAN RESOURCES MANAGEMENT  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
P.O. BOX 2036  
OKLAHOMA CITY, OK 73101-2036

17. If Respondent fails to comply with this Order, Respondent agrees to pay the DEQ an additional penalty of one thousand dollars (\$1,000) for each day of noncompliance with this Order. If the DEQ notifies Respondent that Respondent is not in compliance with this Order and that an additional penalty is being assessed, Respondent may request a hearing to contest the finding of noncompliance. The notification from the DEQ will specify how to request a hearing.

18. If Respondent fails to pay any penalty, the DEQ may bring a separate action for collection of the penalty in District Court. An action by the DEQ for the collection of a penalty does not affect Respondent's duty to complete the tasks required by this Order.

#### **GENERAL PROVISIONS**

19. Respondent agrees to perform the requirements of this Order within the time frames specified unless performance is prevented or delayed by events which are a "force majeure". For purposes of this Order, a force majeure event is defined as any event arising from causes beyond

the reasonable control of Respondent or Respondent's contractors, subcontractors or laboratories which delays or prevents the performance of any obligation under this Order. Examples are vandalism; fire; flood; labor disputes or strikes; weather conditions which prevent or seriously impair construction activities; civil disorder or unrest; and "acts of God". Force majeure events do not include increased costs of performance of the tasks agreed to in this Order, or changed economic circumstances. Respondent must notify the DEQ in writing within fifteen (15) days after Respondent knows or should have known of a force majeure event that is expected to cause a delay in achieving compliance with any requirement of this Order. Failure to submit notification within fifteen (15) days waives the right to claim force majeure.

20. Upon their approval by the DEQ, any final reports, plans, specifications, schedules, and attachments required under this Order are incorporated into it and enforceable under it. Failure of Respondent to reply within a reasonable time to any errors, deficiencies, or other regulatory requirements identified by the DEQ pursuant to this Order is a violation of this Order.

21. No informal advice, guidance, suggestions, or comments by employees of the DEQ regarding reports, plans, specifications, schedules, and other writings affect Respondent's obligation to obtain written approval by the DEQ, when and if required by this Order.

22. Unless otherwise specified, any report, notice, or communication required under this Order shall be in writing and shall be sent to:

**For the Department of Environmental Quality:**

Shellie Chard-McClary, Director  
Water Quality Division  
P.O. Box 1677  
Oklahoma City, OK 73101-1677

**With Copies to:**

**Martha Penisten, General Counsel**

Office of General Counsel  
P.O. Box 1677  
Oklahoma City, OK 73101-1677

**For Respondent:**

Grant Humphreys  
Carlton Landing Water Utility, LLC  
PO Box 1553  
Eufaula, Oklahoma 74432

23. This Order is enforceable as a final order of the Executive Director of the DEQ. The DEQ retains jurisdiction of this matter for the purposes of interpreting, implementing, and enforcing the terms and conditions of this Order and for the purpose of resolving disputes regarding the interpretation of this Order.

24. Nothing in this Order limits the DEQ's right to take enforcement action for violations discovered or occurring after the effective date of this Order.

25. Nothing in this Order limits the DEQ's right to sample, inspect or investigate conditions relating to the Respondent's installation(s) at any reasonable time as provided by law.

26. Nothing in this Order excuses Respondent from its obligation to comply with all applicable federal, state and local statutes, rules, and ordinances. Respondent and the DEQ agree that the provisions of this Order are considered severable, and if a court of competent jurisdiction finds any provisions to be unenforceable because they are inconsistent with state or federal law, the remaining provisions will remain in full effect.

27. The provisions of this Order apply to and bind Respondent and the DEQ and their officers, directors, employees, agents, successors, and assigns. No change in the ownership or corporate status of Respondent will affect Respondent's responsibilities under this Order.

28. Compliance with the terms and conditions of this Order fully satisfies Respondent's liability to DEQ for all items of noncompliance described herein. If Respondent satisfies the

requirements of this Order, the DEQ will not pursue any other remedy, sanction, or relief that might otherwise be available to address the issues of noncompliance in this Order.

29. This Order is for the purpose of settlement. Neither the fact that Respondent and the DEQ have agreed to this Order, nor the Findings of Fact and Conclusions of Law in it, shall be used for any purpose in any proceeding except the enforcement by Respondent and the DEQ of this Order and, if applicable, a future determination by the DEQ of eligibility for licensing or permitting. As to others who are not parties to this Order, nothing contained in this Order is an admission of Respondent of the Findings of Fact or Conclusions of Law, and this Order is not an admission by Respondent of liability for conditions at or near the development and is not a waiver of any right, cause of action or defense to which Respondent is otherwise entitled.

30. Respondent and the DEQ agree that the venue of any action in district court for the purposes of interpreting, implementing, and enforcing this Order will be Oklahoma County, Oklahoma.

31. The requirements of this Order will be considered satisfied and this Order terminated when Respondent receives written notice from the DEQ that Respondent has demonstrated that all the terms of the Order have been completed to the satisfaction of the DEQ, and that any assessed penalty has been paid.

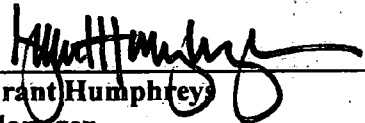
32. Respondent and the DEQ may amend this Order by mutual consent. Such amendments must be in writing and the effective date of any such amendments will be the date on which they are filed by the DEQ.

33. The individuals signing this Order certify that they are authorized to sign and to legally bind the parties they represent.

34. This Order shall become effective on the date of the later of the two signatures below.

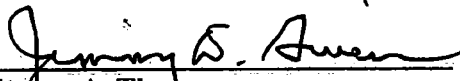
Date: November 22, 2011

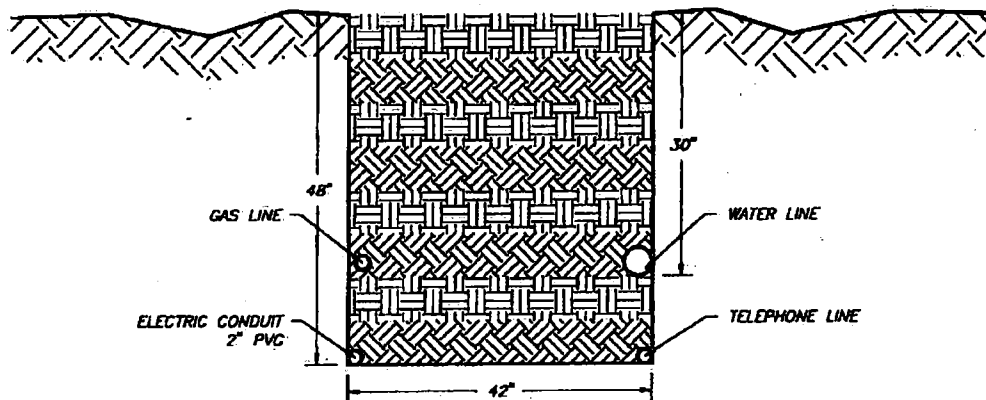
RESPONDENT:  
CARLTON LANDING WATER  
UTILITY, LLC

  
Grant Humphrey  
Manager

Date: November 28, 2011

PETITIONER:  
OKLAHOMA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

  
for Steven A. Thompson  
Executive Director



NOTE:  
ALL WATER METER SETTINGS (METER CAN, SETTER, ETC.) TO BE INSTALLED



**Brown Engineering**  
**Civil & Environmental**

P.O. Box 579 Stillwater, Oklahoma 74076-0579  
PHONE: (405) 372 - 4848  
CA. NO. 2859

**TRENCH DETAIL**

**LONGTOWN RW & SD #1 PITTSBURG CO.**

# SUNSET COURIER, INC.

2401 N.W. 122nd • Suite 233 • Oklahoma City, OK 73120

Bus: (405) 755-6148 • Fax: (405) 755-6276

Mobile: (405) 417-1091

Carlton Landers Utility  
#11-251

DATE

11-23-11

294256

SERVICE REQUESTED

☐  
☐  
☐

REGULAR

SPECIAL

PRIORITY

ACCT. NO.

Spoke at 11:00 @ 11:00am

BILL TO:

CROWE & DUNLEVY

PICK-UP	DELIVERY		WEIGHT	No. PCS	USE CHARGES
		P1 Martha Benister		1	
		Office of Gen Counsel			
		107 N Robinson			
DESCRIPTION					
CMT- K. Williams		OK C1 OK			
RUSH ASAP-		DT CROWE & DUNLEVY			
Hand deliver		20 N. BROADWAY			
		OKC			

UNIFORM BILL OF LADING

BILLING

SHIPPER'S SIGNATURE

C. Bennett

RT. NO.

CONSIGNEE SIGNATURE

C. Bennett

NOT MAILED

June 7, 2011

Grant Humphreys, CEO  
The Humphreys Company  
Carlton Landing  
215 S Walker Ave  
Oklahoma City, OK 73101



**RE: Facility No. S-30601**  
**Statutory Violations**  
**DEQ Complaint No. 300-76577**  
**DEQ Case No. 11-ECLS-NOV-034**

**NOTICE OF VIOLATION**

This is to provide The Humphreys Company with statutory notice of apparent violations of State statutes and/or rules as identified by the Oklahoma Department of Environmental Quality ("DEQ").

The Humphreys Company is currently constructing a new housing development, Carlton Landing. The housing development's wastewater will be treated by a five (5) cell total retention lagoon, Facility No. S-30601. The project will be built in phases. During the first phase only three (3) lagoon cells will be constructed.

On July 30, 2010, DEQ received an engineering report for a proposed total retention lagoon facility that would serve Carlton Landing.

On September 27, 2010 an engineering report comment letter detailing the lack of information in the report was issued to the facility.

On January 29, 2011, Wendy Sheets, Engineer Intern, for DEQ met with Tyler Muzny and Timothy Johnson, P.E., with Johnson and Associates Inc. to discuss items needed for approval of the engineering report.

On February 22, 2011, Johnson and Associates submitted a revised engineering report via email to Wendy Sheets.

On April 28, 2011, a meeting was held at DEQ to discuss the soil borings, groundwater information, and financial assurances. In attendance were Carl Parrott, P.E., Chief Engineer, Robert Huber, and Wendy Sheets for DEQ. Tyler Muzny and Tim Johnson, P.E. with Johnson and Associates, Inc.

On May 23, 2011, plans and specifications were submitted to DEQ for the waterlines for Carlton Landing.

On June 6, 2011, Emily Hoskins, Environmental Specialist, Wendy Sheets, Engineer Intern, and Gordon M. Taylor, Engineer Intern for DEQ conducted a pre-construction inspection of the site and observed that Carlton Landing was already in the process of constructing water lines for the facility without having obtained the required permit from DEQ. DEQ also observed the sanitary sewer lines have been constructed and work on the lift station is in progress of construction. Grant Humphreys, CEO, Kenny Smith, Site Superintendent, and Tim Johnson, P.E., were advised by DEQ to cease any further construction of water distribution lines, sewer collection lines and lift station for the facility until the necessary permits were obtained.

**This Notice is to inform you that constructing a total retention lagoon facility without a permit is a violation of the following Oklahoma Statute:**

**27A § 2-6-401 (A). Construction of treatment or sewer systems or changes in treatment, storage use or disposal of sludge – Permit required, application – Plans and specifications – Innovative treatment techniques.** No person shall construct or let a contract for any construction work of any nature for a municipal treatment works, nonindustrial wastewater treatment system, sanitary sewer systems or other sewage treatment works, or for any extension thereof, or make any change in the manner of nonindustrial wastewater treatment or make any change in treatment, storage, use or disposal of sewage sludge without a permit issued by the Executive Director. Such permit may only be issued to a public entity unless all components of the proposed system, including the service lines, are or will be located on property that is owned by the owner of the system or dedicated to the owner of the system in a recorded easement for the installation and operation of the system.

**As such, DEQ requests that within fifteen (15) days of the effective date of this Notice, The Humphreys Company shall submit a written statement describing the events that prevented The Humphreys Company from complying with DEQ permitting regulations and why The Humphreys should not be fined, along with a schedule for obtaining compliance.**

State statutes provide that the Executive Director of the Department of Environmental Quality may issue an Administrative Compliance Order, which can assess fines of up to ten thousand dollars (\$10,000.00) per day per violation.

Please call Karen Jayne, Environmental Attorney, at (405) 702-7189 or write to Ms. Jayne at the letterhead address if you have any questions concerning this Notice of Violation.

Sincerely,

Gary Collins  
Division Director  
Environmental Complaints and Local Services Division  
Oklahoma Department of Environmental Quality

cc: Traci Martin, ECLS  
Wendy Sheets, ECLS  
Central Records  
Enforcement File

TO: Teresa McPherson, Legal  
FROM: Traci Martin, ECLS  
RE: Enforcement

90 Days \_\_\_\_\_

Compliance \_\_\_\_\_

**RP Information**

Primary Party's Name: Humphreys, Grant

Contact Name: \_\_\_\_\_

Business Name: The Humphreys Company, L.L.C.

Street Address: 215 S. Walker Ave.

City/State/Zip: Oklahoma City, OK 73101

Phone: \_\_\_\_\_



**Case Information**

NOV No.: 11-ecls-nov-034

Facility No.: S-30601

Case No.: \_\_\_\_\_

Permit No.: \_\_\_\_\_

County: Pittsburg

License No.: \_\_\_\_\_

Not Complaint Related: ☒

1<sup>st</sup> Complaint No.: 76577

Complaint Type: ☐ Anonymous ☐ Confidential ☐ Normal

2<sup>nd</sup> Complaint No.: \_\_\_\_\_

Complaint Type: ☐ Anonymous ☐ Confidential ☐ Normal

DEQ Attorney: ☐ Streuli

☐ Gibson

☐ Hagain

☒ Jayne

☐ Burgess

Division Contact: Hoskins/Huber

Cash Fine Owed: \_\_\_\_\_

Due Date for Cash Fine: \_\_\_\_\_

☐ Within 30 days of Receipt of ACO

☐ Payment Plan

Value of SEP to be completed: \_\_\_\_\_

Due Date Completion of SEP: \_\_\_\_\_

**PROGRAM (Check one main Program)**

- ☐ Certified Installers
- ☐ Collections
- ☐ ECLS-Air Violations
- ☐ On-Site Sewage
- ☐ Public Water Supply (for Minor Water Systems)
- ☐ Septage Haulers
- ☐ Soil Testers
- ☐ Solid Waste
- ☒ Water Pollution Control (for Total Retention Lagoons)

**PROBLEM(S) (Check all Problems that apply)**

- ☐ Bypass
- ☒ Construction w/o Permit or Authorization
- ☐ Discharge w/o Permit
- ☐ Fugitive Dust
- ☐ Improper Percolation Test
- ☐ Improper Soil Profile Test
- ☐ Lack of Certified Operator (TRL's)
- ☐ Maintenance Violation(s) (Broken Sprinkler Heads, No Fence, etc.)
- ☐ Non-Payment of Fee(s)
- ☐ Open Burning
- ☐ Open Dumping
- ☐ Operating w/o Permit or Authorization
- ☐ Operating w/o Required License (Non-Licensed Septage Hauler)
- ☐ Permit Violation(s)
- ☐ Reporting Violation(s) (TRL's)
- ☐ Sampling (Aerobic)
- ☐ Surfacing Sewage
- ☐ Unapproved Installation by Certified Installer
- ☐ Unapproved Installation by Non-Certified Installer
- ☐ Other

TO: Teresa McPherson, Legal  
FROM: Traci Martin, ECLS  
RE: Enforcement

90 Days \_\_\_\_\_

Compliance \_\_\_\_\_

**RP Information**

Primary Party's Name: Carlton Landing  
Contact Name: Grant Humphreys  
Business Name: \_\_\_\_\_  
Street Address: PO Box 1100  
City/State/Zip: Oklahoma City, OK 73101  
Phone: \_\_\_\_\_



**Case Information**

NOV No.: 11-ECLS-NOV-034 Facility No.: S-30601  
Case No.: \_\_\_\_\_ Permit No.: \_\_\_\_\_  
County: Pittsburg License No.: \_\_\_\_\_

Not Complaint Related: ☒

1<sup>st</sup> Complaint No.: 76577

Complaint Type: ☐ Anonymous ☐ Confidential ☐ Normal

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Complaint Type: ☐ Anonymous ☐ Confidential ☐ Normal

DEQ Attorney: ☐ Streuli ☐ Gibson ☐ Hagain ☒ Jayne ☐ Burgess

Division Contact: Hskons/Huber

Cash Fine Owed: \_\_\_\_\_ Due Date for Cash Fine: \_\_\_\_\_

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- ☐ Sampling (Aerobic)
- ☐ Surfacing Sewage
- ☐ Unapproved Installation by Certified Installer
- ☐ Unapproved Installation by Non-Certified Installer
- ☐ Other